

Kahler, Pam

From: Hale, Janine
Sent: Tuesday, November 11, 2003 10:05 AM
To: Kahler, Pam
Cc: ONeill, Eileen
Subject: OCI tech bill

Hi Pam,

I speaking with Jim Guidry, I understand that I need to ask LRB for the jacket to the OCI tech bill (LRB 3601/2). It's a little confusing since our office was never sent the usual electronic draft with the macros to jacket as a bill. If you could expedite this for me, it would be much appreciated.

Thanks,
Janine

*Janine L. Hale
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1-888-534-0063
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Please jacket LRB-3601/2
for the Assembly and
send to Rep. Ladwig's

Office.

Thank you!

Pam

Kahler, Pam

From: Nepple, Fred
Sent: Thursday, November 13, 2003 11:28 AM
To: Kahler, Pam
Subject: FW: Technical Bill



Amendments to
OCI Technical Bi...

Memorandum

To: Fred Nepple
From: Steve Radke
Date: November 13, 2003
Re: OCI Technical Bill

Upon review of the LRB-3601/2 version of the OCI technical bill, we have several suggestions for minor amendments. As I mentioned on my message yesterday, I doubt there enough time to make these changes before the bill is introduced, however these seem like minor changes that Senator Schultz and Rep. Ladwig could offer at mark-up. In fact, I mentioned to both of their offices that there is a chance some clean up would have to be done.

Annuity Nonforfeiture

Net Considerations – Section 29 of the /2 version of the bill (page 17) defines “net considerations” as “an amount equal to **87** percent of the gross considerations credited to the contract during that contract year.” Earlier drafts, and more importantly the model, state that it should be **87.5** percent. I would imagine this was just a typo, but nonetheless one that needs to be addressed.

Effective Date - We have continued to examine the effective date provision (Section 31, page 19). Despite that fact that this is language we supplied, we would like to bring one item to your attention. The effect of this provision would be to give companies the option to file under the new regime for two years, at which time the new system becomes mandatory. While this is what was intended, we also realized that Section 29 (page 17) repeals the old provision. The model did not go into detail as to how to address this issue. I looked at how a number of other states approached this, and found that there is not a uniform approach – in fact some states did exactly what we proposed. Theoretically, however, if a company wanted to file a product under the old system, that statutory language no longer exists. While we think it is unlikely anyone would truly file under the old language, this could be addressed most easily by adopting the effective date language that Iowa used. They stated:

After the effective date of this Act, a company may elect either to apply the provisions of this section as it existed prior to the effective date of this Act or to apply the provisions of this section as enacted by this Act to annuity contracts on a contract form-by-form basis before the second anniversary of the effective date of this act. In all other instances, this section shall become operative with respect to annuity contracts issued by the company two years after the effective date of this Act.

While we are not sure how critical of an issue this is, since we supplied you with the original language, we thought you should be aware of its potential shortcomings.

Suitability of Recommendations

Recommendations that results in a purchase or exchange – We concur with the comments of Linda Lanam that the model definition of recommendation should be present in the bill. As we have discussed in the past, it was a long-fought issue at the NAIC that the obligations of this proposal would become unwieldy if they had to be applied to all recommendations. Insurers will only learn of recommendations of their producers if they resulted in a purchase or exchange. In addition, casual recommendations, at the

most-preliminary stages of a conversation with a potential client ("perhaps you should think about an annuity") could be swept in inadvertently. Finally, it seems implausible that a producer would make a recommendation *without* anticipating that a sale might result – accordingly – even with the language we are suggesting -- all recommendations should still be suitable.

While we realize §628.347(2)(a) states that the intermediary "may not recommend to a senior consumer the purchase or exchange of an annuity *if the recommendation results in another insurance transaction or series of transactions...*" we believe this falls short of the model's intent for several reasons.

First, on pure syntax, if the italicized modifying language above is meant to apply to both purchases and exchanges, for new purchases the language in essence reads: "an intermediary may not recommend to a senior consumer the purchase...of an annuity if the recommendation results in another insurance transaction or series of transactions..." The concept of "another" is misplaced here, and tends make the overall meaning confusing. Compare the draft language to the model language:

In recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that results in another transaction or series of insurance transactions, the insurance producer...shall have reasonable grounds for believing that the recommendation is suitable...

In the model language, I read "that results in another transaction or series of insurance transactions" to apply only to exchange recommendations, and believe this language was added to bring in the concept of a series of transactions. Under the model definition of recommendation, recommendations for both purchases and exchanges are only covered if the recommendation results in a purchase or exchange of an annuity in accordance with that advice (Section 5(D)). The Wisconsin draft tried to meld these two concepts together in §628.347(2)(a), with a somewhat garbled result.

In addition to the shortcomings of §628.347(2)(a), we believe the 5(D) definition of recommendation should be included for other reasons as well. While §628.347(2)(a) attempts to point out that the duties of those making the recommendation apply on when a transaction results, the term "recommendation" is used throughout the new section without this caveat. For example, Wisconsin's sub. (3)(a), pertaining to insurer supervisory responsibility, states "An insurer shall ensure that a system to supervise recommendations that is reasonably designed to achieve compliance with this section is established and maintained..." Similarly, (3)(b) states "A general agent or independent agency shall adopt a system established by an insurer to supervise recommendations of its insurance intermediaries that is reasonably designed to achieve compliance with this section..." By re-instating the definition of recommendation, it will greatly clarify that these supervisory systems need only deal with advice that results in a purchase or exchange in accordance with that advice.

Record Keeping -- In the Wisconsin draft, the recordkeeping requirement is placed on the insurer and insurance intermediary (page 16, line 6). In the NAIC model, this obligation is placed on "insurers, general agents, independent agencies and insurance producers." We are unsure why this change was made. It seems logical that if suitability responsibilities are delegated to, say, a broker dealer, that there is where the record keeping duties should remain as well.

Please let me know if you have any questions or further thoughts on these comments.

Kahler, Pam

From: Nepple, Fred

Sent: Thursday, November 13, 2003 12:23 PM

To: Kahler, Pam

Subject: LRB 3601/2 revisions

Pam:

1) ~~Steve Radke~~ advocates for the following revision in addition to adding the definition of recommend and recommendation to clarify that a sale must occur:

may not recommend to a senior consumer the purchase OF AN ANNUITY or exchange of an annuity *if the recommendation results in another insurance transaction or series of transactions...*

Steve points out accurately that a "purchase of an annuity" does not "result in another insurance transaction." The capitalized language makes it clear that clause applies only to an "exchange of an annuity."
no, it does not

- 2) Steve also pointed out that the draft does not include the NAIC suitability model provision stating that the provision does not create a "private cause of action." He indicated he assumed that is because Wisconsin case law already indicates there is no private cause of action under the Insurance Code. I told him that is accurate and I believed the drafting file reflects that (or will now).

Thanks

11/13/2003

Draft: 9/14/03

A new model

Adopted by the Plenary 9/14/03

SENIOR PROTECTION IN ANNUITY TRANSACTIONS MODEL REGULATION

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Section 1. Purpose

- A. The purpose of this regulation is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed.
- B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

Drafting Note: The language of Subsection B comes from the NAIC Unfair Trade Practices Act. If a state has adopted different language, it should be substituted for Subsection B.

Section 2. Scope

This regulation shall apply to any recommendation to purchase or exchange an annuity made to a senior consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

Section 3. Authority

This regulation is issued under the authority of [insert reference to enabling legislation].

Drafting Note: States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.

Section 4. Exemptions

Unless otherwise specifically included, this regulation shall not apply to recommendations involving:

- A. Direct response solicitations where there is no recommendation based on information collected from the senior consumer pursuant to this regulation;
- B. Contracts used to fund:
 - (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (2) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
 - (3) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;
 - (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - (5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - (6) Formal prepaid funeral contracts.

Section 5. Definitions

- A. "Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.
- B. "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
- C. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.
- D. "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual senior consumer that results in a purchase or exchange of an annuity in accordance with that advice.
- E. "Senior consumer" means a person sixty-five (65) years of age or older. In the event of a joint purchase by more than one party, the purchaser will be considered to be a senior consumer if any of the parties is age sixty-five (65) or older.

Section 6. Duties of Insurers and of Insurance Producers

- A. In recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the senior

consumer on the basis of the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

- B. Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:
- (1) The senior consumer's financial status;
 - (2) The senior consumer's tax status;
 - (3) The senior consumer's investment objectives; and
 - (4) Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the senior consumer.
- C. (1) Except as provided under Paragraph (2) of this subsection, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a senior consumer under Subsection A related to any recommendation if a consumer:
- (a) Refuses to provide relevant information requested by the insurer or insurance producer;
 - (b) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or
 - (c) Fails to provide complete or accurate information.
- (2) An insurer or insurance producer's recommendation subject to Paragraph (1) shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.
- D. (1) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this regulation is established and maintained by complying with Paragraphs (3) to (5) of this subsection, or shall establish and maintain such a system, including, but not limited to:
- (a) Maintaining written procedures; and
 - (b) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.
- (2) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this regulation, or shall establish and maintain such a system, including, but not limited to:

- (a) Maintaining written procedures; and
 - (b) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.
- (3) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Paragraph (1) with respect to insurance producers under contract with or employed by the third party.
- (4) An insurer shall make reasonable inquiry to assure that the third party contracting under Paragraph (3) of this subsection is performing the functions required under Paragraph (1) of this subsection and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:
 - (a) The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and
 - (b) The insurer, based on reasonable selection criteria, periodically selects third parties contracting under Paragraph (3) of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.
- (5) An insurer that contracts with a third party pursuant to Paragraph (3) of this subsection and that complies with the requirements to supervise in Paragraph (4) of this subsection shall have fulfilled its responsibilities under Paragraph (1) of this subsection.
- (6) An insurer, general agent or independent agency is not required by Paragraph (1) or (2) of this subsection to:
 - (a) Review, or provide for review of, all insurance producer solicited transactions; or
 - (b) Include in its system of supervision an insurance producer's recommendations to senior consumers of products other than the annuities offered by the insurer, general agent or independent agency.
- (7) A general agent or independent agency contracting with an insurer pursuant to Paragraph (3) of this subsection shall promptly, when requested by the insurer pursuant to Paragraph (4) of this subsection, give a certification as described in Paragraph (4) of this subsection or give a clear statement that it is unable to meet the certification criteria.

- (8) No person may provide a certification under Paragraph (4)(a) of this subsection unless:
 - (a) The person is a senior manager with responsibility for the delegated functions; and
 - (b) The person has a reasonable basis for making the certification.
- E. Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce the provisions of this regulation.

Drafting Note: This subsection is intended to grant a safe harbor when the NASD has reviewed a transaction and found that it complies with the NASD Conduct Rules pertaining to suitability.

Section 7. Mitigation of Responsibility

A. The commissioner may order:

- (1) An insurer to take reasonably appropriate corrective action for any senior consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;

Drafting Note: Section 7A(1) is not intended to apply to violations by an insurance producer who, under a state's laws, is not an insurer's agent. A state may wish to review this issue and, if necessary, clarify that the paragraph does not apply to brokers who are agents of the senior consumer, not the insurer.

- (2) An insurance producer to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation; and
- (3) A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to senior consumers, to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation.

Drafting Note: A senior consumer may have a right to seek relief through NASD arbitration for sale of a variable annuity in violation of the NASD Conduct Rules pertaining to suitability. State insurance departments may wish to consider this right when determining whether to bring an action requiring corrective action under Subsection A.

- B. Any applicable penalty under [insert statutory citation] for a violation of Section 6A, B, or C(2) of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the senior consumer was taken promptly after a violation was discovered.

Drafting Note: A state that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, “shall” should be substituted for “may” in the same sentence.

Section 8. [Optional] Recordkeeping

- A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions for [insert number] years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

Drafting Note: States should review their current record retention laws and specify a time period that is consistent with those laws. For some states this time period may be five (5) years.

- B. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Drafting Note: This section may be unnecessary in states that have a comprehensive recordkeeping law or regulation.

w:\drafts\misc\senior9.doc

11-13

as discussed w/ Fred Hepple -

add "including gr
agent & inde.

agency "
after "ins. intermediary"

for suitability part, change in text to

"an" instead of "another"

and one day office

NAIC
from model act

3601

Kahler, Pam

From: Nepple, Fred
Sent: Friday, November 14, 2003 1:22 PM
To: 'Linda Lanam'
Cc: Carrie Hartgen; 'steveradke@northwesternmutual.com'
Subject: RE: Draft WI Language for Senior Protections in Annuity Transactions ACLI

Linda:

I've discussed these concerns with Steve Radke, NML, and Pam Kahler, the legislative attorney was revising the draft as of yesterday afternoon to address them:

- 1) The definition of "recommendation" will be added. I believe that this will address the "advice of producer" issue.
- 2) Intermediary does encompass a "general agent or independent agency" as defined under s. 628.02, Wis. Stat. However the revised draft will add "including a general agent or independent agency" to make this absolutely clear.
- 3) Steve Radke, Pam Kahler (the legislative attorney and I) had extensive discussions regarding the last issue described in your email. The revised draft will not drop the words "insurance transaction or series of insurance transaction. This is out of my concern that the language remain as close as possible to the model. However we believe the issue is addressed by changing "another" to "an." This makes it clear that the purchase or exchange is "an" insurance transaction itself. That is, a separate and subsequent insurance transaction is not required to invoke the statute (although there is obviously a separate insurance transaction in an exchange). We believe this works.

Please let me know if you concur.

- 4) There is caselaw in Wisconsin that says there is no private cause of action under the Insurance Code. There is no intent to create a private cause of action by addition of this provision. However adding a specific disclaimer would highlight the issue and raise a negative inference that could lead a court to conclude that other provisions not including such a disclaimer do create a private cause of action. Certainly it would seem to require any future legislation to explicitly address it one way or another. Hence we elected to not explicitly include the disclaimer. The reason for this decision is reflected in emails to Pam and I presume will be retained in the drafting file, the principle source of "legislative intent" in our state.
- 5) The deletion of the "purpose" and "scope" provisions is not because the suitability section is included in a broader bill. Legislative Reference Bureau drafting style would call for deletion regardless. The long standing direction to legislative attorneys, including in their drafting manual, is to delete such provisions because the effect of the draft should be explicitly included in the substantive provision. Since the NAIC style is to include these provisions, we are very familiar with this issue. As you note the draft should, at this point, accurately reflect the substantive effect of the NAIC model. In addition the NAIC model is in the drafting file.

Thank you for your prompt response. Please let me know your views relating to item #3.

-----Original Message-----

From: Linda Lanam [mailto:LindaLanam@acli.com]
Sent: Friday, November 14, 2003 12:44 PM
To: Nepple, Fred
Cc: Carrie Hartgen
Subject: RE: Draft WI Language for Senior Protections in Annuity Transactions
Importance: High

I apologize for not being able to get back to you more quickly. My first instinct is to agree with the

11/17/2003

legislative drafter that the definition is "belt and suspenders" and so could be dispensed with. However, my member companies are concerned about two things. The first concern is that only in the definition is the "advice of the producer" language used. Although the connection with the recommendation and action is part of all future references, the requirement of "advice" is not. There are those who believe that action without specific advice could occur and be sanctioned. This concern is related to one expressed by those who see that including this model in a broader bill requires eliminating the purpose and cope section and that losing the language there AND the definition results in deviations that they believe could be misread at a later time. A peripheral concern is the loss of the no "private cause of action" language. Is this because there is similar protection elsewhere in the WI code?

Two other points: Is "intermediary" the WI reference which encompasses the "general agent or independent agency" reference in the model? I had thought that the language you provided for the model was WI language. Also, there is a typo in the model which neither Carolyn nor I caught until after adoption and it has been picked up in your draft. In Section 628.347 (2) the phrase "if the recommendation results in another insurance transaction or series of insurance transactions" was inadvertently left in after we limited the scope of the model to the "purchase or exchange of an annuity." In fact, leaving this phrase in can limit the regulation to only those instances where such a subsequent transaction occurs while the model as it should read covers any recommended purchase or exchange. I discussed this with Carolyn and she agreed, but it can only be changed at the NAIC by formal amendment and that couldn't be done before December at the earliest. She suggested dealing with it as states propose the model for adoption and I failed to catch it in your language.

Is there still time to deal with these issues without complicating the legislative schedule? Thanks again for all your help.

Linda L. Lanam
Vice President, Annuities
American Council of Life Insurers
101 Constitution Ave. NW
Washington, DC 20001
(202) 624-2161

-----Original Message-----

From: Nepple, Fred [mailto:Fred.Nepple@oci.state.wi.us]

Sent: Monday, November 10, 2003 2:09 PM

To: Linda Lanam

Subject: RE: Draft WI Language for Senior Protections in Annuity Transactions

Linda:

The legislative attorney felt (2) (a), the substantive provision, already so provided, hence the definition was redundant. It would be helpful if you could give the reasoning if your group is interested in revision, if only to explain to the legislative attorney, and also to those Wisconsin companies who are interested.

I don't believe the bill has been introduced yet and also don't know whether a revision can be made before introduction as opposed to by amendment after introduction. Since the bill includes a number of items of interest to the industry they may be concerned about even the most minor tinkering if it will throw off the legislative strategy. We will discuss it with them however if this is a real concern.

-----Original Message-----

From: Linda Lanam [mailto:LindaLanam@acli.com]

Sent: Monday, November 10, 2003 12:53 PM

To: Nepple, Fred

Subject: RE: Draft WI Language for Senior Protections in Annuity Transactions

Thanks, Fred. I will talk to some folks to see what can be done about the definition

11/17/2003

of "recommendation." The critical point is that it must result in a purchase or exchange in order to be actionable. Let me re-read your proposal in its entirety to see how that concept plays out. If we need to get it inserted, do you need something from us explaining the reasoning? Re the system of supervision, you confirmed what I thought and I think we will be okay. I will check with those concerned to be sure. Thanks again for getting back to me so quickly.

Linda L. Lanam
Vice President, Annuities
American Council of Life Insurers
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Washington, DC 20001
(202) 624-2161

-----Original Message-----

From: Nepple, Fred [mailto:Fred.Nepple@oci.state.wi.us]
Sent: Monday, November 10, 2003 12:12 PM
To: Linda Lanam
Cc: Carrie Hartgen
Subject: RE: Draft WI Language for Senior Protections in Annuity Transactions

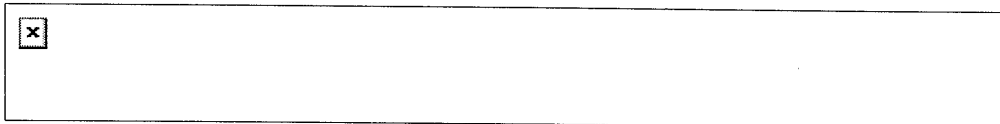
I corrected the citations in point 2, below.

-----Original Message-----

From: Nepple, Fred
Sent: Monday, November 10, 2003 11:09 AM
To: 'Linda Lanam'; Nepple, Fred
Cc: Carrie Hartgen
Subject: RE: Draft WI Language for Senior Protections in Annuity Transactions

Linda:

- 1) The deletion of the defined term "recommendation" was by the legislative drafting attorney. She pointed out, and I was unable to dispute, that it added nothing to the substantive language. There certainly was no intent to make a substantive change, and if you feel there is a substantive effect we certainly are willing to look how we can move it back to the model. You will note that the drafter also deleted the purpose statement.
- 2) The language dealing with the delegation to a third party is intended to say that the delegation satisfies the requirements for a system of supervision so far as the third parties authority goes. I assume that the language you refer to is:



contained in s. 628.347 (3) (e). This language repeats the limits of delegation contained in (3) (c)-in fact it is virtually identical. As we discussed during the deliberations on the Model the delegation is solely as to those supervised by the 3rd party, and obviously does not satisfy the insurer's obligation as to those not supervised by the third party. I frankly don't recall whether the drafting attorney or I added this language, but its purpose is as you describe.

-----Original Message-----

From: Linda Lanam [mailto:LindaLanam@acli.com]

Sent: Monday, November 10, 2003 10:48 AM
To: Nepple, Fred
Cc: Carrie Hartgen
Subject: Draft WI Language for Senior Protections in Annuity Transactions

In reviewing the provision of the WI OCI draft bill which relate to the sale of annuities to senior citizens I recognized a couple of relative significant differences between the NAIC model and the language that you are proposing. Of particular importance to ACLI's members is the lack of the definition of the term "recommendation" which should be the underpinning of the regulatory authority. Would you let me know your reasoning for this change, please. Also, is the language dealing with the delegation to a third party intended to say that the delegation satisfies the requirements for a system of supervision so far as the third party's authority goes? I have had a question as to whether it, in fact, leaves the company responsible for failure to supervise even after a permissible and complying delegation. I have responded that I didn't think that was your intent, but I thought I should make sure. Thanks.

Linda L. Lanam
Vice President, Annuities
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(202) 624-2161



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3601/
PJK/CMH/RJM:cjs:pg

3
v mis run slays

2003 BILL

(Thurs)
today,
if possible

Repeal
↓

1 AN ACT *to repeal* 617.225 (5), chapter 641, 646.01 (1) (b) 9. a., 646.01 (1) (b) 9.
2 b., 646.01 (1) (b) 9. c., 646.01 (1) (b) 9. d., 646.31 (2) (b) 1., 646.31 (2) (b) 2. b.,
3 646.31 (2) (b) 3., 646.31 (3), 646.31 (5), 646.35 (2), 646.51 (2), 646.51 (3) (b) and
4 646.73; *to renumber* 646.51 (3) (a) (title); *to renumber and amend* 601.41 (4)
5 (a), 611.26 (4), 612.22 (3), 646.01 (1) (b) 9. (intro.), 646.11 (1), 646.31 (10), 646.31
6 (13), 646.33 (1), 646.35 (3) (intro.) (except 646.35 (3) (title)), 646.35 (3) (a),
7 646.35 (3) (b), 646.35 (3) (c), 646.35 (4), 646.51 (1), 646.51 (3) (a) 1., 646.51 (3)
8 (a) 2. and 646.51 (4); *to consolidate, renumber and amend* 646.31 (2) (b) 2.
9 (intro.) and a.; *to amend* 600.03 (21), 601.31 (1) (k) (intro.), 601.465 (3) (intro.),
10 601.64 (1), 609.98 (1), 609.98 (4) (a), 609.98 (4) (b), 611.56 (1), 611.56 (2), 612.22
11 (title), 612.22 (1), 612.22 (4), 612.22 (6), 617.225 (1), 632.435 (1) (a), 632.435 (1)
12 (b), 632.435 (5), 632.435 (12), 645.58 (1) (intro.), 646.12 (2) (d), 646.12 (2) (f) 2.,
13 646.12 (2) (f) 3., 646.12 (4), 646.13 (title), 646.13 (1) (intro.), 646.13 (1) (b),
14 646.13 (2) (intro.), 646.13 (2) (b), 646.13 (2) (c), 646.13 (2) (d), 646.13 (3) (intro.),

BILL

646.13 (3) (a), 646.13 (3) (b), 646.13 (3) (c) (intro.), 646.13 (3) (c) 2., 646.13 (4),
646.15 (title), 646.15 (1) (a) (intro.), 646.15 (1) (a) 1., 646.15 (1) (a) 2., 646.15 (1)
(a) 4., 646.21 (2), 646.31 (2) (a) 1., 646.31 (2) (a) 2., 646.31 (2) (f) (title), 646.31
(2) (f) 2., 646.31 (6) (a), 646.31 (6) (b), 646.31 (7), 646.31 (8), 646.31 (9) (a), 646.31
(9) (b), 646.31 (9) (c), 646.31 (9) (d), 646.31 (11), 646.32 (1), 646.325 (1), 646.325
(2) (intro.), 646.325 (2) (a) (intro.), 646.325 (2) (b), 646.33 (2), 646.33 (3), 646.35
(3) (title), 646.35 (5), 646.35 (6) (a), 646.35 (6) (b), 646.35 (6) (bm), 646.35 (6) (c)
(intro.), 646.35 (6) (c) 1. (intro.), 646.35 (6) (c) 1. b., 646.35 (6) (c) 2. (intro.),
646.35 (6) (c) 2. b., 646.51 (3) (c), 646.51 (5), 646.51 (6), 646.51 (7) (a), 646.51 (8),
646.51 (9) (b) 1., 646.51 (9) (b) 2., 646.60 (1) (a) and 646.61 (2); ***to repeal and***
recreate 632.435 (4), 646.01 (1) (b) 1. and 646.01 (1) (b) 11.; and ***to create***
601.31 (1) (tc), 601.41 (4) (a) 1., 601.41 (4) (a) 2., 611.26 (4) (a), 611.26 (4) (b),
612.13 (1m), 612.22 (3) (b), 628.347, 646.01 (1) (a) 2. k., 646.01 (1) (a) 2. L.,
646.01 (1) (b) 11m., 646.01 (1) (b) 15., 646.01 (1) (b) 16., 646.01 (1) (b) 17., 646.01
(1) (b) 18., 646.03 (1m), 646.03 (2n), 646.03 (2p), 646.03 (4), 646.03 (5), 646.11
(1) (d), 646.11 (1) (e), 646.13 (2) (g), 646.16, 646.31 (1) (d) 10. and 11., 646.31 (2)
(g), 646.31 (9) (cm), 646.31 (10) (b), 646.31 (13) (b), 646.31 (13) (c), 646.31 (13)
(d), 646.33 (1) (b), (c) and (d), 646.33 (2m) (b), 646.35 (4) (b), 646.35 (7), 646.35
(8), 646.35 (9), 646.35 (10), 646.51 (1c), 646.51 (3) (am) 2. and 646.51 (4) (a), (b)
and (d) of the statutes; **relating to:** requirements for recommendations made
by insurers and insurance intermediaries to senior consumers in annuity
transactions; committees of the board of directors of domestic stock and mutual
corporations; annuity minimum nonforfeiture amount; merger of town mutual
and domestic mutual insurance corporation into a town mutual; the insurance

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- 1 security fund; other miscellaneous changes to the insurance provisions; and
2 granting rule-making authority.

Analysis by the Legislative Reference Bureau

Suitability of recommendations

This bill prohibits an insurance intermediary, or insurer if no intermediary is involved, from making a recommendation to a person who is 65 years old or older (senior consumer) about purchasing or exchanging an annuity unless the intermediary or insurer has reasonable grounds to believe that the recommendation is suitable for the senior consumer based on facts disclosed by the senior consumer. Before making a recommendation, the intermediary or insurer must make reasonable efforts to obtain information from the senior consumer about his or her financial status, tax status, and investment objectives.

The bill requires insurers either to ensure that a system for supervising annuity transaction recommendations that are made to senior consumers is established and maintained or to establish and maintain its own system, and provides certain requirements with which the supervisory system must comply. The bill authorizes the commissioner of insurance (commissioner) to order an insurer or intermediary to take corrective action if a senior consumer is harmed by a violation of the provisions regulating annuity transaction recommendations and authorizes the commissioner to promulgate rules to reduce or eliminate penalties for violations of the provisions if, after a violation is discovered, corrective action is promptly taken for the senior consumer.

Insurance security fund

This bill makes a number of changes to the insurance security fund provisions to make them more uniform with the insurance guaranty fund laws of other states, thus facilitating the administration of liquidations that involve national insurers. In general, the insurance security fund (fund), which is created as a nonprofit organization and funded through assessments paid by insurers covered under the fund, pays claims against insolvent insurers.

Current law specifies types of insurers and insurance that are not covered under the fund. The bill adds some exclusions, including the state Health Insurance Risk-Sharing Plan, the patients compensation fund, a warranty or service contract, any contractual liability policy issued to a warrantor or service contract provider, and the deductible portion of a claim under a liability or worker's compensation insurance policy. The bill clarifies that, although reinsurance is generally not covered under the fund, reinsurance ceded by an assessable town mutual and reinsurance for which the reinsurer has issued assumption certificates are covered.

The bill transfers some of the responsibilities of the fund's board of directors (board) to the fund, including establishing procedures and acceptable forms of proof for eligible claims, exercising the powers of the liquidator in any action against an insurer in liquidation, and having standing to appear in any liquidation proceeding in this state involving an insurer in liquidation. The bill also gives the fund the

that results in the purchase or exchange of an annuity in accordance with the recommendation.

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authority to appear or intervene before a court or agency of any other state that has jurisdiction over an impaired or insolvent insurer with respect to which the fund is or may become obligated.

Current law specifies the types of claims that are payable by the fund. The bill adds a number of types of claims that are not payable, including a claim based on marketing materials, a claim for bad faith damages, and a claim based on misrepresentations regarding policy benefits. The bill specifies the eligibility requirements for claims of payees under structured settlement annuities, which current law does not address. The bill also eliminates a \$200 deductible that is required under current law before the fund pays any portion of a claim.

Under current law, the fund may recover from a person any amount paid on behalf of the person to a third party. The bill provides that if the fund defends a claim against the person by a third party, the fund may also recover from the person the costs and expenses incurred in defending the claim. The bill expands on the subrogation rights of the fund under current law.

Under current law, the fund may guarantee, assume, or reinsure coverage under an annuity or a life or disability insurance policy. The bill prohibits the fund from providing such coverage, however, to any person who has coverage under any other state's security fund statutes. The bill also provides authority for the fund to succeed, if it so elects, to an insolvent insurer's rights and obligations under a contract covered by the fund under an indemnity reinsurance agreement.

Current law generally provides that assessments paid by insurers to support the fund are based on premium written in the year before the year in which the order of liquidation is entered. The bill changes the assessment base to the year preceding the year in which the assessment is approved by the board. Under current law the maximum assessment in any calendar year is two percent of premium. Under the bill the maximum assessment in any calendar year may not exceed two percent of average annual premium received in this state during the three calendar years preceding the year in which the liquidation order is entered.

Town mutuals

Under current law, one or more town mutual corporations may merge with a single domestic mutual corporation to form a single domestic mutual corporation. Approval of the merger must be given by the commissioner, based on a plan of merger that is filed with the commissioner.

This bill provides that, if a domestic mutual merging with one or more town mutuals is nonassessable, the merging mutuals must form a domestic mutual but, if the merging domestic mutual is assessable, the merging mutuals may form either a domestic mutual or a town mutual. If the merging mutuals form a town mutual, the plan of merger filed with the commissioner must include a time schedule for bringing the resulting town mutual into compliance with the insurance laws relating to town mutuals. The commissioner may approve any reasonable schedule not exceeding three years.

The bill also provides that, if the board of a town mutual has fewer than nine directors, no more than one director may be an employee or representative of the town mutual and that in no case may employees and representatives of a town

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mutual constitute a majority of its board. These limitations, which apply under current law to domestic mutual corporations, will apply to town mutuals in two years unless the commissioner allows further delay for up to one year.

Minimum nonforfeiture amount

Under current law, the minimum amount that must be paid under an annuity contract (called the minimum nonforfeiture amount) is calculated by using an interest rate of three percent. This bill changes the interest rate that is used to calculate the minimum nonforfeiture amount to an indexed rate that is based on the monthly yield on actively traded U.S. treasury securities, adjusted to a constant maturity of five years (five-year constant maturity treasury rate), as published by the Federal Reserve Board. The actual rate used, however, may not exceed three percent or be lower than one percent. If the contract so provides, the interest rate may be redetermined at different times during the term of the contract. Thus, the interest rate used over the term of the annuity contract may be the five-year constant maturity treasury rate at times and three percent or one percent at other times.

Committees

Under current law, the board of directors of an insurer that is a domestic stock or mutual corporation may appoint committees to exercise various powers of the board of directors in the management of the business and affairs of the corporation. Generally, a committee of the board must consist of three or more directors. This bill adds that such a committee may include one or more nonvoting members who are not directors.

Miscellaneous

The bill makes a few additional miscellaneous changes including: specifically providing that orders of the commissioner may be for remedial measures or restitution; clarifying that, in addition to information obtained from insurance regulators, the Office of the Commissioner of Insurance (OCI) may refuse to disclose and prevent any other person from disclosing information provided by OCI to those insurance regulators; limiting the amount that an insurance corporation may invest in a subsidiary; removing an exemption for payment of extraordinary dividends by a domestic insurer to a domestic insurer from a requirement to report the payment to the commissioner at least 30 days in advance; and providing for an annual fee of \$500 to be listed by the commissioner for surplus lines insurance. The bill also repeals chapter 641, relating to the authority of the commissioner to conduct examinations and impose certain enforcement measures with respect to employee benefit plans, because it is largely preempted by the federal Employee Retirement Income Security Act.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1

SECTION 1. 600.03 (21) of the statutes is amended to read:

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1 600.03 (21) "Form" means a policy, group certificate, or application prepared
2 for general use and does not include one specially prepared for use in an individual
3 case. See also "policy".

4 **SECTION 2.** 601.31 (1) (k) (intro.) of the statutes is amended to read:

5 601.31 (1) (k) (intro.) For filing an annual statement, ~~except as provided in s.~~
6 ~~641.13:~~

7 **SECTION 3.** 601.31 (1) (tc) of the statutes is created to read:

8 601.31 (1) (tc) For each annual listing by the commissioner for surplus lines
9 insurance under s. 618.41 (6) (d), \$500.

10 **SECTION 4.** 601.41 (4) (a) of the statutes is renumbered 601.41 (4) (a) (intro.)
11 and amended to read:

12 601.41 (4) (a) (intro.) The commissioner shall issue such prohibitory,
13 mandatory, and other orders as are necessary to secure compliance with the law. An
14 order requiring remedial measures or restitution may include any of the following:

15 **SECTION 5.** 601.41 (4) (a) 1. of the statutes is created to read:

16 601.41 (4) (a) 1. Remedial measures or restitution under s. 628.347 (5).

17 **SECTION 6.** 601.41 (4) (a) 2. of the statutes is created to read:

18 601.41 (4) (a) 2. Remedial measures or restitution to enforce s. 611.72 or ch.
19 617, including seizure or sequestering of voting securities of an insurer owned
20 directly or indirectly by a person who has acquired or who is proposing to acquire
21 voting securities in violation of s. 611.72 or ch. 617.

22 **SECTION 7.** 601.465 (3) (intro.) of the statutes is amended to read:

23 601.465 (3) (intro.) Testimony, reports, records, communications, and
24 information that are obtained by the office from, or provided by the office to, any of

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1 the following, under a pledge of confidentiality or for the purpose of assisting in the
2 conduct of an investigation or examination:

3 **SECTION 8.** 601.64 (1) of the statutes is amended to read:

4 601.64 (1) INJUNCTIONS AND RESTRAINING ORDERS. The commissioner may
5 commence an action in circuit court in the name of the state to restrain by temporary
6 or permanent injunction or by temporary restraining order any violation of chs. 600
7 to 655, s. 149.13 or 149.144, any rule promulgated under chs. 600 to 655 or any order
8 issued under s. 601.41 (4). ~~Except as provided in s. 641.20, the~~ The commissioner
9 need not show irreparable harm or lack of an adequate remedy at law in an action
10 commenced under this subsection.

11 **SECTION 9.** 609.98 (1) of the statutes is amended to read:

12 609.98 (1) DEFINITION. In this section, “premiums” has the meaning given
13 under s. 646.51 (3) ~~(a) 1~~ (1c) (c).

14 **SECTION 10.** 609.98 (4) (a) of the statutes is amended to read:

15 609.98 (4) (a) To pay an assessment under s. 646.51 (3) ~~(a) or (b)~~ (am).

16 **SECTION 11.** 609.98 (4) (b) of the statutes is amended to read:

17 609.98 (4) (b) To the extent that the amount on deposit exceeds 1% of premiums
18 written in this state by the health maintenance organization insurer in the preceding
19 calendar year and the deposit is not necessary to pay an assessment under s. 646.51
20 (3) ~~(a) or (b)~~ (am).

21 **SECTION 12.** 611.26 (4) of the statutes is renumbered 611.26 (4) (intro.) and
22 amended to read:

23 611.26 (4) OTHER SUBSIDIARIES. (intro.) An insurance corporation may form or
24 acquire other subsidiaries than those under subs. (1) to (3). The investment in such
25 subsidiaries may be counted toward satisfaction of the compulsory surplus

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1 requirement of s. 623.11 and the security surplus standard of s. 623.12 to the extent
2 that the investment is a part of the leeway investments of s. 620.22 (9) for the first
3 \$200,000,000 of assets or to the extent that the investment is within the limitations
4 under s. 620.23 (2) (a) and (b) for other assets. The commissioner may limit
5 investment in subsidiaries under this subsection by rule or order. Unless approved
6 by the commissioner, an insurance corporation may not do any of the following:

7 **SECTION 13.** 611.26 (4) (a) of the statutes is created to read:

8 611.26 (4) (a) Invest in a subsidiary more than 10 percent of its assets or 50
9 percent of its capital and surplus, whichever is less.

10 **SECTION 14.** 611.26 (4) (b) of the statutes is created to read:

11 611.26 (4) (b) Invest in a subsidiary to the extent that the insurer's capital and
12 surplus with regard to policyholders will not be reasonable in relation to the insurer's
13 outstanding liabilities or adequate to meet the insurer's financial needs.

14 **SECTION 15.** 611.56 (1) of the statutes is amended to read:

15 611.56 (1) APPOINTMENT. If the articles or bylaws of a corporation so provide,
16 the board by resolution adopted by a majority of the full board may designate one or
17 more committees, each consisting of at least 3 or more directors serving at the
18 pleasure of the board. The board may designate one or more directors as alternate
19 members of any committee to substitute for any absent member at any meeting of
20 the committee. Any committee under this section may include one or more nonvoting
21 members who are not directors. The designation of a committee and delegation of
22 authority to it shall not relieve the board or any director of any responsibility
23 imposed by law.

24 **SECTION 16.** 611.56 (2) of the statutes is amended to read:

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1 611.56 (2) DELEGATION; MAJOR COMMITTEES. When the board is not in session,
2 a committee satisfying all of the requirements for the composition of a board under
3 s. 611.51 (2) to (4) may exercise any of the powers of the board in the management
4 of the business and affairs of the corporation, including action under ss. 611.60 and
5 611.61, to the extent authorized in the resolution or in the articles or bylaws; except
6 that any such committee may ~~be composed of~~ include 7 or more directors if the
7 corporation has 9 or more directors.

8 **SECTION 17.** 612.13 (1m) of the statutes is created to read:

9 612.13 (1m) INSIDE DIRECTORS. (a) Beginning 2 years after the effective date
10 of this paragraph [revisor inserts date], all of the following apply:

11 1. If a town mutual has fewer than 9 directors, no more than one director may
12 be an employee or representative of the town mutual.

13 2. Employees and representatives of a town mutual may not constitute a
14 majority of its board.

15 (b) Notwithstanding par. (a), the commissioner may allow a town mutual an
16 extension of up to one year to come into compliance with the requirements under par.
17 (a).

18 **SECTION 18.** 612.22 (title) of the statutes is amended to read:

19 **612.22 (title) Merger of town mutuals ~~into~~ and mutual insurance**
20 **corporations.**

21 **SECTION 19.** 612.22 (1) of the statutes is amended to read:

22 612.22 (1) CONDITIONS FOR MERGER. One or more town mutuals may merge with
23 a single domestic mutual under ch. 611. ~~The~~ If the domestic mutual is nonassessable,
24 the surviving corporation shall be a mutual under ch. 611. If the domestic mutual

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1 is assessable, the surviving corporation may be either a mutual under ch. 611 or a
2 town mutual under this chapter.

3 **SECTION 20.** 612.22 (3) of the statutes is renumbered 612.22 (3) (a) and
4 amended to read:

5 612.22 (3) (a) Each of the participating corporations shall file with the
6 commissioner for approval a copy of the resolution and any explanatory material
7 proposed to be issued to the members, together with so much of the information
8 under s. 611.13 (2) or 612.02 (4), whichever is appropriate, for the surviving or new
9 corporation as the commissioner reasonably requires. The commissioner shall
10 approve the plan unless he or she finds, after a hearing, that it would be contrary to
11 the law, or that the surviving or new corporation would not satisfy the requirements
12 for a certificate of authority under s. 611.20 or 612.02 (6), whichever is appropriate,
13 or that the plan would be contrary to the interest of insureds or of the public.

14 **SECTION 21.** 612.22 (3) (b) of the statutes is created to read:

15 612.22 (3) (b) If the surviving corporation will be a town mutual, the plan filed
16 with the commissioner under par. (a) shall include a time schedule for bringing the
17 surviving corporation into compliance with this chapter. The commissioner may
18 approve a reasonable time schedule that does not exceed 3 years.

19 **SECTION 22.** 612.22 (4) of the statutes is amended to read:

20 612.22 (4) APPROVAL BY MEMBERS OF THE TOWN MUTUALS. After being approved
21 by the commissioner under sub. (3), the plan shall be submitted to the members of
22 the participating town mutuals for their approval. The members of each town
23 participating mutual shall vote separately.

24 **SECTION 23.** 612.22 (6) of the statutes is amended to read:

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1 612.22 (6) REPORTS TO COMMISSIONER. Each participating town mutual shall file
2 with the commissioner a copy of the resolution adopted under sub. (4), stating the
3 number of members entitled to vote, the number of members voting, and the number
4 of votes cast in favor of the plan, stating separately in each case the mail votes and
5 the votes cast in person.

6 **SECTION 24.** 617.225 (1) of the statutes is amended to read:

7 617.225 (1) ~~Except as provided under sub. (5), a~~ A domestic insurer may not
8 pay an extraordinary dividend to its shareholders and an affiliate of the insurer may
9 not accept an extraordinary dividend unless the insurer reports the extraordinary
10 dividend to the commissioner at least 30 days before payment and the commissioner
11 does not disapprove the extraordinary dividend within that period.

12 **SECTION 25.** 617.225 (5) of the statutes is repealed.

13 **SECTION 26.** 628.347 of the statutes is created to read:

14 **628.347 Suitability of annuity sales to senior consumers. (1)**

15 DEFINITIONS. In this section:

16 (a) "Annuity" means a fixed or variable annuity that is individually solicited,
17 whether the product is classified as individual or group.

18 (c) "Senior consumer" means a person who is 65 years of age or older. The term
19 includes any joint owner of an annuity who is less than 65 years of age if at least one
20 joint owner is 65 years of age or older, and any prospective joint purchaser of an
21 annuity who is less than 65 years of age if at least one prospective joint purchaser
22 is 65 years of age or older.

23 **(2) DUTIES OF INSURERS AND INSURANCE INTERMEDIARIES WITH REGARD TO**
24 **RECOMMENDATIONS.** (a) Except as provided in par. (c), an insurance intermediary, or
25 insurer if no intermediary is involved, may not recommend to a senior consumer the

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1 purchase or exchange of an annuity if the recommendation results in ~~another~~ ^{an}
2 insurance transaction or series of insurance transactions unless the intermediary or
3 insurer has reasonable grounds to believe that the recommendation is suitable for
4 the senior consumer on the basis of facts disclosed by the senior consumer as to his
5 or her investments, other insurance products, and financial situation and needs.

6 (b) Before making a recommendation described in par. (a), an insurance
7 intermediary, or insurer if no intermediary is involved, shall make reasonable efforts
8 to obtain information concerning all of the following:

- 9 1. The senior consumer's financial status.
- 10 2. The senior consumer's tax status.
- 11 3. The senior consumer's investment objectives.
- 12 4. Any other information that is reasonably appropriate for determining the
13 suitability of a recommendation to the senior consumer.

14 (c) An insurance intermediary, or insurer if no intermediary is involved, has no
15 obligation under par. (a) to a senior consumer related to a recommendation if the
16 senior consumer does any of the following:

- 17 1. Refuses to provide relevant information requested by the insurer or
18 insurance intermediary.
- 19 2. Fails to provide complete or accurate information.
- 20 3. Decides to enter into an insurance transaction that is not based on a
21 recommendation of the insurer or insurance intermediary.

22 (d) Any recommendation of an insurer or insurance intermediary that, under
23 par. (c), is not subject to the obligation under par. (a) shall be reasonable under all
24 circumstances actually known to the insurer or insurance intermediary at the time
25 the recommendation is made.

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1 (3) INSURER'S SUPERVISORY RESPONSIBILITY. (a) An insurer either shall ensure
2 that a system to supervise recommendations that is reasonably designed to achieve
3 compliance with this section is established and maintained by complying with pars.
4 (c) to (e), or shall establish and maintain such a system, which shall include at least
5 all of the following:

6 1. Maintaining written procedures.
7 2. Conducting periodic reviews of its records that are reasonably designed to
8 assist in detecting and preventing violations of this section.

9 (b) A general agent or independent agency either shall adopt a system
10 established by an insurer to supervise recommendations of its insurance
11 intermediaries that is reasonably designed to achieve compliance with this section,
12 or shall establish and maintain such a system, which shall include at least all of the
13 following:

14 1. Maintaining written procedures.
15 2. Conducting periodic reviews of records that are reasonably designed to assist
16 in detecting and preventing violations of this section.

17 (c) An insurer may contract with a 3rd party, which may be a general agent or
18 independent agency, to establish and maintain a system of supervision as required
19 under par. (a) with respect to insurance intermediaries under contract with or
20 employed by the 3rd party.

21 (d) An insurer shall make reasonable inquiry to ensure that any 3rd party with
22 which the insurer contracts under par. (c) is performing the functions required under
23 par. (a) and shall take such action as is reasonable under the circumstances to enforce
24 the contractual obligation to perform the functions. An insurer may comply with its
25 obligation to make reasonable inquiry in all of the following ways:

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1 1. The insurer annually obtains from a senior manager of the 3rd party who
2 has responsibility for the delegated functions a representation that the 3rd party is
3 performing the required functions and that the senior manager has a reasonable
4 basis for making the representation.

5 2. The insurer, based on reasonable selection criteria, periodically selects 3rd
6 parties contracting under par. (c) for reviews to determine whether the 3rd parties
7 are performing the required functions. The insurer shall perform those procedures
8 to conduct the reviews that are reasonable under the circumstances.

9 (e) An insurer that contracts with a 3rd party under par. (c) and that complies
10 with the supervisory requirement under par. (d) satisfies its responsibilities under
11 par. (a) as to insurance intermediaries under contract with or employed by the 3rd
12 party.

13 (f) An insurer is not required under par. (a), and a general agent or independent
14 agency is not required under par. (b), to do any of the following:

15 1. Review, or provide for the review of, all insurance intermediary solicited
16 transactions.

17 2. Include in its system of supervision an insurance intermediary's
18 recommendations made to senior consumers of products other than annuities offered
19 by the insurer, general agent, or independent agency.

20 (g) A general agent or independent agency contracting with an insurer under
21 par. (c) shall promptly, upon request by the insurer under par. (d), provide a
22 representation as described in par. (d) 1. or give a clear statement that it is unable
23 to meet the representation criteria.

24 (h) No person may provide a representation under par. (d) 1. unless the person
25 satisfies all of the following:

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1 1. The person is a senior manager with responsibility for the delegated
2 functions.

3 2. The person has a reasonable basis for making the representation.

4 (4) NATIONAL ASSOCIATION OF SECURITIES DEALERS CONDUCT RULES. Compliance
5 with the National Association of Securities Dealers Conduct Rules pertaining to
6 suitability satisfies the requirements under sub. (2) for the recommendation of
7 variable annuities. Nothing in this subsection, however, limits the commissioner's
8 ability to enforce this section.

9 (5) REMEDIAL MEASURES. The commissioner may do any of the following:

10 (a) Order an insurer to take reasonably appropriate corrective action for any
11 senior consumer harmed by a violation of this section by the insurer or the insurer's
12 insurance intermediary.

13 (b) Order an insurance intermediary to take reasonably appropriate corrective
14 action for any senior consumer harmed by a violation of this section by the insurance
15 intermediary.

16 (c) Order a general agent or independent agency that employs or contracts with
17 an insurance intermediary to sell, or solicit the sale of, annuities to senior consumers
18 to take reasonably appropriate corrective action for any senior consumer harmed by
19 a violation of this section by the insurance intermediary.

20 (6) PENALTIES; MITIGATION. (a) Any person who violates this section is subject
21 to the penalties provided under s. 601.64, suspension or revocation of a license or
22 certificate of authority, and an order under s. 601.41 (4).

23 (b) A penalty under par. (a) for a violation of sub. (2) (a), (b), or (d), including
24 a forfeiture, may be reduced or eliminated to the extent provided by rule of the

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1 commissioner if corrective action is taken for the senior consumer promptly after the
2 violation is discovered.

3 (c) The commissioner may promulgate rules related to the reduction or
4 elimination of penalties for violations of this section on the basis of prompt action
5 taken to correct any harm caused to senior consumers by the violations.

6 (7) RECORD KEEPING. An insurer and an insurance intermediary shall maintain,
7 or be able to make available to the commissioner, records of the information collected
8 from a senior consumer and other information used in making a recommendation
9 that was the basis for an insurance transaction for 6 years after the insurance
10 transaction is completed by the insurer, except as otherwise permitted by the
11 commissioner by rule. An insurer may, but is not required to, maintain records on
12 behalf of an insurance intermediary, including a general agent and an independent agency

13 (8) EXEMPTIONS. This section does not apply to any of the following:

14 (a) Direct response solicitations in which no recommendation is made based on
15 information collected from the senior consumer.

16 (b) Recommendations related to contracts used to fund any of the following:

17 1. An employee pension or welfare benefit plan that is covered by the federal
18 Employee Retirement and Income Security Act.

19 2. A plan described in section 401 (a) or (k), 403 (b), or 408 (k) or (p) of the
20 Internal Revenue Code, if the plan is established or maintained by an employer.

21 3. A government or church plan as defined in section 414 of the Internal
22 Revenue Code, a government or church welfare benefit plan, or a deferred
23 compensation plan of a state or local government or tax exempt organization under
24 section 457 of the Internal Revenue Code.

including a general agent and an independent agency

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1 4. A nonqualified deferred compensation arrangement established or
2 maintained by an employer or plan sponsor.

3 5. A settlement or assumption of liability associated with personal injury
4 litigation or any dispute or claim resolution process.

5 6. A formal prepaid funeral or burial contract.

6 **SECTION 27.** 632.435 (1) (a) of the statutes is amended to read:

7 632.435 (1) (a) Upon cessation of payment of considerations under a contract,
8 or upon the written request of the contract owner, the company will shall grant a
9 paid-up annuity on a plan stipulated in the contract of such value as is specified in
10 subs. (5) to (8) and (10).

11 **SECTION 28.** 632.435 (1) (b) of the statutes is amended to read:

12 632.435 (1) (b) If a contract provides for a lump sum settlement at maturity or
13 at any other time, upon surrender of the contract at or prior to the commencement
14 of any annuity payments, the company will shall pay in lieu of any paid-up annuity
15 benefit a cash surrender benefit of such amount as is specified in subs. (5), (6), (8),
16 and (10). The company shall may reserve the right to defer the payment of such cash
17 surrender benefit, for a period of not exceeding 6 months after demand therefor with
18 surrender of the contract, if the company receives written approval from the
19 commissioner upon the company's written request, which shall address the deferral's
20 necessity and equitability to all policyholders.

21 **SECTION 29.** 632.435 (4) of the statutes is repealed and recreated to read:

22 632.435 (4) (a) In this subsection, "net considerations" means, for a given
23 contract year, an amount equal to ~~27~~ percent of the gross considerations credited to
24 the contract during that contract year.

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1 (b) The minimum nonforfeiture amount at or prior to the commencement of any
2 annuity payments shall be equal to an accumulation up to such time, at one or more
3 rates of interest as indicated in pars. (c) to (e), of the net considerations paid prior
4 to such time, decreased by the sum of all of the following:

5 1. Any prior withdrawals from or partial surrenders of the contract
6 accumulated at one or more rates of interest as indicated in pars. (c) to (e).

7 2. An annual contract charge of \$50, accumulated at one or more rates of
8 interest as indicated in pars. (c) to (e).

9 3. Any premium tax paid by the company for the contract, accumulated at one
10 or more rates of interest as indicated in pars. (c) to (e).

11 4. The amount of any indebtedness to the company on the contract, including
12 interest due and accrued.

13 (c) The interest rate used to determine minimum nonforfeiture amounts shall
14 be an annual rate of interest that is the lower of 3 percent and the higher of either
15 of the following:

16 1. The 5-year constant maturity treasury rate reported by the federal reserve
17 board as of a date, or average over a period, specified in the contract no longer than
18 15 months prior to the contract issue date or redetermination date under par. (d), less
19 125 basis points or, if the contract provides substantive participation in an equity
20 indexed benefit during the period or term, the contract may increase the reduction
21 by up to an additional 100 basis points to reflect the value of the equity index benefit,
22 and rounded to the nearest one-twentieth of 1 percent.

23 2. One percent.

24 (d) The interest rate determined under par. (c) shall apply for an initial period
25 and may be redetermined for additional periods. The redetermination date, basis,

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1 and period, if any, shall be stated in the contract. The basis is the date or average
2 over a specified period that produces the value of the 5-year constant maturity
3 treasury rate to be used at each redetermination date. The method for determining
4 the interest rate under par. (c) shall be specified in the contract if the interest rate
5 will be reset.

6 (e) The present value at the contract issue date, and at each redetermination
7 date, of the additional reduction under par. (c) 1. for substantive participation in an
8 equity index benefit may not exceed the market value of the benefit. The
9 commissioner may require a demonstration that the present value of the additional
10 reduction does not exceed the market value of the benefit. The commissioner may
11 disallow or limit the additional reduction if the commissioner determines that the
12 demonstration is unacceptable.

13 (f) The commissioner may promulgate rules for the implementation of par. (e)
14 and to provide for further adjustments to the calculation of minimum nonforfeiture
15 amounts for contracts that provide substantive participation in an equity index
16 benefit and for other contracts for which the commissioner determines adjustments
17 are justified.

18 **SECTION 30.** 632.435 (5) of the statutes is amended to read:

19 632.435 (5) Any paid-up annuity benefit available under a contract shall be
20 such that its present value on the date annuity payments are to commence is at least
21 equal to the minimum nonforfeiture amount on that date. Such present value shall
22 be computed using the mortality table, if any, and the interest rate or rates specified
23 in the contract for determining the minimum paid-up annuity benefits guaranteed
24 in the contract.

25 **SECTION 31.** 632.435 (12) of the statutes is ~~amended to read:~~ *repealed.*

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~~632.435 (12) After November 8, 1977 the effective date of this subsection
[revisor inserts date], any company may file with the commissioner a written notice
of its election elect to comply with this section after a specified date on a contract
form-by-contract form basis, for contracts newly issued, before the 2nd anniversary
of November 8, 1977. After the filing of such notice, then upon such specified date,
which shall be the operative date of this section for such company the effective date
of this subsection [revisor inserts date]. In all other instances, this section shall
become operative with respect to annuity contracts thereafter issued by such
company. If a company makes no such election, the operative date of this section for
such company shall be on or after the 2nd anniversary of November 8, 1977 the
effective date of this subsection [revisor inserts date].~~

SECTION 32. Chapter 641 of the statutes, as affected by 2001 Wisconsin Act 109,
is repealed.

SECTION 33. 645.58 (1) (intro.) of the statutes, as affected by 2003 Wisconsin
Act 44, is amended to read:

645.58 (1) LIABILITY. (intro.) Except as provided in this subsection and in s.
646.35 (8) (e), the amount recoverable by the liquidator from a reinsurer shall not be
reduced as a result of delinquency proceedings, regardless of any provision in the
reinsurance contract or other agreement. Payment made directly to an insured or
other creditor shall not diminish the reinsurer's obligation to the insurer's estate
except when any of the following applies:

SECTION 34. 646.01 (1) (a) 2. k. of the statutes is created to read:

646.01 (1) (a) 2. k. Risk-sharing plans under chs. 149 and 619.

SECTION 35. 646.01 (1) (a) 2. L. of the statutes is created to read:

646.01 (1) (a) 2. L. The patients compensation fund under s. 655.27.

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SECTION 36. 646.01 (1) (b) 1. of the statutes is repealed and recreated to read:

646.01 (1) (b) 1. Any portion of a life insurance policy or annuity contract that is not guaranteed by the insurer or under which the risk is borne by the policy or policyholder.

SECTION 37. 646.01 (1) (b) 9. (intro.) of the statutes is renumbered 646.01 (1) (b) 9. and amended to read:

646.01 (1) (b) 9. Any self-funded, ~~self-insured~~, or partially or wholly uninsured plan of an employer or other person to provide life insurance, annuity, or disability benefits to its employees or members to the extent that the plan is self-funded, ~~self-insured~~, or uninsured, ~~including benefits payable by an employer or other person under any of the following:~~

SECTION 38. 646.01 (1) (b) 9. a. of the statutes is repealed.

SECTION 39. 646.01 (1) (b) 9. b. of the statutes is repealed.

SECTION 40. 646.01 (1) (b) 9. c. of the statutes is repealed.

SECTION 41. 646.01 (1) (b) 9. d. of the statutes is repealed.

SECTION 42. 646.01 (1) (b) 11. of the statutes is repealed and recreated to read:

646.01 (1) (b) 11. Any warranty or service contract.

SECTION 43. 646.01 (1) (b) 11m. of the statutes is created to read:

646.01 (1) (b) 11m. Any contractual liability policy that is issued to a warrantor, warranty plan, warranty plan administrator, or service contract provider and that provides coverage of any liability or performance arising out of or in connection with a warranty or service contract.

SECTION 44. 646.01 (1) (b) 15. of the statutes is created to read:

646.01 (1) (b) 15. An unallocated annuity contract.

SECTION 45. 646.01 (1) (b) 16. of the statutes is created to read:

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1 646.01 (1) (b) 16. A contractual agreement that obligates an insurer to provide
2 a book value accounting guarantee for defined contribution benefit plan participants
3 by reference to a portfolio of assets that is owned by the benefit plan or its trustee,
4 neither of which is an affiliate of the insurer.

5 **SECTION 46.** 646.01 (1) (b) 17. of the statutes is created to read:

6 646.01 (1) (b) 17. Any liability under a policy or contract to the extent that it
7 provides for interest or other changes in value that are to be determined by the use
8 of an index or other external reference stated in the policy or contract and to the
9 extent that the interest or other changes in value have not been credited to the policy
10 or contract as of the date of the entry of the order of liquidation and are subject to
11 forfeiture. If a policy's or contract's interest or other changes in value are credited
12 less frequently than annually, for purposes of determining the values that have been
13 credited and that are not subject to forfeiture, the interest or change in value
14 determined by using the procedures specified in the policy or contract will be credited
15 as if the contractual date of crediting interest or other changes in value was the date
16 of entry of the order of liquidation and will not be subject to forfeiture.

17 **SECTION 47.** 646.01 (1) (b) 18. of the statutes is created to read:

18 646.01 (1) (b) 18. The deductible, self-funded, or self-insured portion of a claim
19 under a liability or worker's compensation insurance policy, regardless of the timing
20 or method provided in the policy, endorsement, or any other agreement for payment
21 of the deductible, self-funded, or self-insured amount by the insured. This
22 subdivision does not apply to a worker's compensation insurance policy if the insured
23 under the policy is a debtor under 11 USC 701, et seq., as of the deadline set by the
24 liquidator for filing claims against the insolvent insurer.

25 **SECTION 48.** 646.03 (1m) of the statutes is created to read:

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1 646.03 (1m) “Direct insurance” does not include a policy or contract of
2 reinsurance, except for the following:

3 (a) Reinsurance for which the reinsurer has issued assumption certificates
4 under the reinsurance policy or contract.

5 (b) Reinsurance ceded by an assessable town mutual company.

6 **SECTION 49.** 646.03 (2n) of the statutes is created to read:

7 646.03 (2n) “Impaired insurer” means an insurer subject to this chapter that
8 is placed under an order of rehabilitation or conservation by a court of competent
9 jurisdiction.

10 **SECTION 50.** 646.03 (2p) of the statutes is created to read:

11 646.03 (2p) “Insolvent insurer” means an insurer subject to this chapter that
12 is placed under an order of liquidation by a court of competent jurisdiction with a
13 finding of insolvency.

14 **SECTION 51.** 646.03 (4) of the statutes is created to read:

15 646.03 (4) With respect to a life or disability insurance policy or an annuity
16 contract, “owner” or “policyholder” means the person who is identified as the legal
17 owner under the terms of the policy or contract or who is otherwise vested with legal
18 title to the policy or contract through a valid assignment completed in accordance
19 with the terms of the policy or contract and properly recorded as the owner on the
20 books of the insurer. “Owner” or “policyholder” does not include a person with only
21 a beneficial interest in a policy or contract.

22 **SECTION 52.** 646.03 (5) of the statutes is created to read:

23 646.03 (5) “Unallocated annuity contract” means an annuity contract or group
24 annuity certificate that is not issued to and owned by an individual, except to the

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1 extent of any annuity benefits guaranteed to an individual by an insurer under the
2 contract or certificate.

3 **SECTION 53.** 646.11 (1) of the statutes is renumbered 646.11 (1) (intro.) and
4 amended to read:

5 646.11 (1) (intro.) ORGANIZATION. There is created a fund an organization to be
6 known as the “insurance security fund”.” All insurers subject to this chapter are
7 contributors to the fund as a result of their authority to transact business in this
8 state. The fund shall consist of all of the following:

9 (a) All payments made by insurers under s. 646.51, ~~of the~~.

10 (b) The earnings resulting from investments under s. 646.21 (2) ~~and of the~~.

11 (c) The amounts recovered under s. 645.72 (2) or a substantially similar law in
12 the state of domicile of the insolvent insurer.

13 **SECTION 54.** 646.11 (1) (d) of the statutes is created to read:

14 646.11 (1) (d) Amounts reimbursed to the fund through its subrogation and
15 assignment rights.

16 **SECTION 55.** 646.11 (1) (e) of the statutes is created to read:

17 646.11 (1) (e) Any other moneys received by the fund from time to time.

18 **SECTION 56.** 646.12 (2) (d) of the statutes is amended to read:

19 646.12 (2) (d) Employ or retain the personnel necessary to carry out ~~its~~ the
20 fund's duties and set compensation for the personnel, ~~sue or be sued, make contracts~~
21 ~~and borrow money necessary to carry out its duties in the most efficient way,~~
22 ~~including money with which to pay claims under s. 646.31 or to continue coverage~~
23 ~~under s. 646.35. The board may offer as security for such loans its claims against the~~
24 ~~liquidator or its power to levy assessments under this chapter.~~ Personnel employed

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1 under this paragraph are not employees of the state and are not subject to s. 20.922
2 or ch. 230.

3 **SECTION 57.** 646.12 (2) (f) 2. of the statutes is amended to read:

4 646.12 (2) (f) 2. Keep confidential the records under subd. 1. pertaining to
5 specific liquidation proceedings involving an insurer until the termination of the
6 liquidation proceedings or until sooner ordered to make the records public by a court
7 of competent jurisdiction.

8 **SECTION 58.** 646.12 (2) (f) 3. of the statutes is amended to read:

9 646.12 (2) (f) 3. Keep confidential the records under subd. 1. pertaining to
10 specific rehabilitation proceedings involving an insurer unless ordered to make the
11 records public by a court of competent jurisdiction.

12 **SECTION 59.** 646.12 (4) of the statutes is amended to read:

13 646.12 (4) OTHER POWERS. The ~~board~~ fund may join an organization consisting
14 of one or more entities of other states performing comparable functions, in order to
15 assist the ~~board~~ fund in carrying out its powers and duties under this chapter and
16 otherwise further the purposes of this chapter.

17 **SECTION 60.** 646.13 (title) of the statutes is amended to read:

18 **646.13 (title) Special duties and powers of the ~~board~~ fund related to loss**
19 **claims.**

20 **SECTION 61.** 646.13 (1) (intro.) of the statutes is amended to read:

21 646.13 (1) DUTIES. (intro.) The ~~board~~ fund shall:

22 **SECTION 62.** 646.13 (1) (b) of the statutes is amended to read:

23 646.13 (1) (b). Stand in the position of the insurer in the investigation,
24 compromise, settlement, denial, and payment of claims under s. 646.31 and the
25 defense of 3rd party claims against insureds, subject to the limitations of s. 645.43.

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1 The ~~board~~ fund shall consult and cooperate with the liquidator in carrying out these
2 duties.

3 **SECTION 63.** 646.13 (2) (intro.) of the statutes is amended to read:

4 646.13 (2) POWERS. (intro.) The ~~board~~ fund may:

5 **SECTION 64.** 646.13 (2) (b) of the statutes is amended to read:

6 646.13 (2) (b) Exercise with respect to loss claims the powers that the liquidator
7 has with respect to other claims under ch. 645 or a substantially similar law in the
8 state of domicile of the insolvent insurer.

9 **SECTION 65.** 646.13 (2) (c) of the statutes is amended to read:

10 646.13 (2) (c) With respect to any action against an insurer which is in
11 liquidation, exercise the powers of the liquidator under s. 645.49 (1) or a
12 substantially similar law in the state of domicile of the insolvent insurer.

13 **SECTION 66.** 646.13 (2) (d) of the statutes is amended to read:

14 646.13 (2) (d) Have standing to appear in any liquidation proceedings in this
15 state involving an insurer in liquidation, and have authority to appear or intervene
16 before a court or agency of any other state having jurisdiction over an impaired or
17 insolvent insurer, in accordance with the laws of that state, with respect to which the
18 fund is or may become obligated or that has jurisdiction over any person or property
19 against which the fund may have subrogation or other rights. Standing shall extend
20 to all matters germane to the powers and duties of the fund, including proposals for
21 reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or
22 insolvent insurer and the determination of the policies or contracts and contractual
23 obligations.

24 **SECTION 67.** 646.13 (2) (g) of the statutes is created to read:

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1 646.13 (2) (g) Sue and be sued, make contracts, and borrow money necessary
2 to carry out its duties, including money with which to pay claims under s. 646.31 or
3 to continue coverage under s. 646.35. The fund may offer as security for such loans
4 its claims against the liquidator or its power to levy assessments under this chapter.

5 **SECTION 68.** 646.13 (3) (intro.) of the statutes is amended to read:

6 646.13 (3) NO DUTY OR LIABILITY. (intro.) The ~~board~~ fund has no duty or liability
7 with respect to any claim filed as follows:

8 **SECTION 69.** 646.13 (3) (a) of the statutes is amended to read:

9 646.13 (3) (a) With the liquidator under s. 645.61 after the original date for
10 filing specified by the liquidator under s. 645.47 (2), unless the liquidator determines
11 that the claim is considered to have been timely filed under s. 645.61 (2) and the claim
12 participates fully in every distribution to the same extent as other timely filed claims
13 in the same class.

14 **SECTION 70.** 646.13 (3) (b) of the statutes is amended to read:

15 646.13 (3) (b) With a liquidator or court under the laws of any other state after
16 the original date for filing specified by the liquidator or court, unless the liquidator
17 or court determines that the claim is considered to have been timely filed under a law
18 substantially similar to s. 645.61 (2) and the claim participates fully in every
19 distribution to the same extent as other timely filed claims in the same class.

20 **SECTION 71.** 646.13 (3) (c) (intro.) of the statutes is amended to read:

21 646.13 (3) (c) (intro.) Except for claims under life insurance policies, annuities
22 and, or noncancelable or guaranteed renewable disability insurance policies, and
23 except for claims determined to be excused late filings as provided in pars. (a) and
24 (b), if the original date for filing is extended by the liquidator or court, with a
25 liquidator or court after the earlier of the following: